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20 UNITED STATES DISTRICT COURT

21 DISTRICT OF NEVADA

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24 H. RASIKH, M. SAMIR MANSOUR, AZZA  
25 EID, NAZMI M. NAZMI, and HEBA NAZMI,

26 Plaintiffs,

27 v.

28 ALASKA AIRLINES, INC.,

Defendant.

Case No. CV-S-04-1304-RCJ-CWH

**DEFENDANT ALASKA AIRLINES,  
INC.'S PROPOSED JURY  
INSTRUCTIONS**

Judge: Honorable Miranda M. Du

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Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on the law.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

sd-581619 1 CASE NO. CV-S-04-1304-RCJ-CWH

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ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS



**3. WHAT IS EVIDENCE**

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

**Authority: 9th Cir. Civ. Jury Inst. 1.6 (2007)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

1 **4. WHAT IS NOT EVIDENCE**

2 In reaching your verdict, you may consider only the testimony and exhibits received into  
3 evidence. Certain things are not evidence, and you may not consider them in deciding what the  
4 facts are. I will list them for you:

- 5 (1) Arguments and statements by lawyers are not evidence. The lawyers are not  
6 witnesses. What they will say in their opening statements and closing arguments,  
7 and at other times is intended to help you interpret the evidence, but it is not  
8 evidence. If the facts as you remember them differ from the way the lawyers have  
9 stated them, your memory of them controls.
- 10 (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to  
11 their clients to object when they believe a question is improper under the rules of  
12 evidence. You should not be influenced by the objection or by the court's ruling on  
13 it.
- 14 (3) Testimony that has been excluded or stricken, or that you have been instructed to  
15 disregard, is not evidence and must not be considered. In addition, sometimes  
16 testimony and exhibits are received only for a limited purpose; when I give a  
17 limiting instruction, you must follow it.
- 18 (4) Anything you may have seen or heard when the court was not in session is not  
19 evidence. You are to decide the case solely on the evidence received at the trial.

20 **Authority: 9th Cir. Civ. Jury Inst. 1.7 (2007)**

21 Given as Requested: \_\_\_\_\_

22 Given as Modified: \_\_\_\_\_

23 Refused: \_\_\_\_\_

24 Withdrawn: \_\_\_\_\_

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28 JUDGE OF THE DISTRICT COURT



**5. EVIDENCE FOR LIMITED PURPOSE**

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

**Authority: 9th Cir. Civ. Jury Inst. 1.8 (2007)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

1                                    **6.        DIRECT AND CIRCUMSTANTIAL EVIDENCE**

2            Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as  
 3 testimony by a witness about what that witness personally saw or heard or did. Circumstantial  
 4 evidence is proof of one or more facts from which you could find another fact. You should  
 5 consider both kinds of evidence. The law makes no distinction between the weight to be given to  
 6 either direct or circumstantial evidence. It is for you to decide how much weight to give to any  
 7 evidence.

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 14 **Authority: 9th Cir. Civ. Jury Inst. 1.9 (2007)**

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18 Refused: \_\_\_\_\_

19 Withdrawn: \_\_\_\_\_

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 22 JUDGE OF THE DISTRICT COURT  
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## 8. CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.





1 require the entire trial process to start over. If any juror is exposed to any outside information,  
2 please notify the court immediately.

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14 **Authority: 9th Cir. Civ. Jury Inst. 1.12 (2007)**

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19 Withdrawn: \_\_\_\_\_

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JUDGE OF THE DISTRICT COURT  
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**10. NO TRANSCRIPT AVAILABLE TO JURY**

During deliberations, you will have to make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

If at any time you cannot hear or see the testimony, evidence, questions or arguments, let me know so that I can correct the problem.

**Authority: 9th Cir. Civ. Jury Inst. 1.13 (2007)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT



1 **11. TAKING NOTES**

2 If you wish, you may take notes to help you remember the evidence. If you do take notes,  
 3 please keep them to yourself until you and your fellow jurors go to the jury room to decide the  
 4 case. Do not let note-taking distract you. When you leave, your notes should be left in the jury  
 5 room. No one will read your notes. They will be destroyed at the conclusion of the case.

6 Whether or not you take notes, you should rely on your own memory of the evidence.  
 7 Notes are only to assist your memory. You should not be overly influenced by your notes or those  
 8 of your fellow jurors.

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14 **Authority: 9th Cir. Civ. Jury Inst. 1.14 (2007)**

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18 Refused: \_\_\_\_\_

19 Withdrawn: \_\_\_\_\_

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 22 JUDGE OF THE DISTRICT COURT  
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12. OUTLINE OF TRIAL

Trials proceed in the following way: First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The plaintiff will then present evidence, and counsel for the defendant may cross-examine. Then the defendant may present evidence, and counsel for the plaintiff may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

**Authority: 9th Cir. Civ. Jury Inst. 1.19 (2007)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT



**14. JURY TO BE GUIDED BY OFFICIAL ENGLISH  
TRANSLATION/INTERPRETATION**

Languages other than English may be used during this trial.

The evidence to be considered by you is only that provided through the official court [interpreters] [translators]. Although some of you may know [*language to be used*], it is important that all jurors consider the same evidence. Therefore, you must accept the English [interpretation] [translation]. You must disregard any different meaning.

**Authority: 9th Cir. Civ. Jury Inst. 1.16 (2007)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

**15. USE OF INTERPRETERS IN COURT**

You must not make any assumptions about a witness or a party based solely upon the use of an interpreter to assist that witness or party.

**Authority: 9th Cir. Civ. Jury Inst. 1.17 (2007)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT



1                                    **17. BENCH CONFERENCES AND RECESSES**

2            From time to time during the trial, it [may become] [became] necessary for me to talk with  
 3    the attorneys out of the hearing of the jury, either by having a conference at the bench when the  
 4    jury [is] [was] present in the courtroom, or by calling a recess. Please understand that while you  
 5    [are] [were] waiting, we [are] [were] working. The purpose of these conferences is not to keep  
 6    relevant information from you, but to decide how certain evidence is to be treated under the rules  
 7    of evidence and to avoid confusion and error.

8            Of course, we [will do] [have done] what we [can] [could] to keep the number and length  
 9    of these conferences to a minimum. I [may] [did] not always grant an attorney's request for a  
 10   conference. Do not consider my granting or denying a request for a conference as any indication  
 11   of my opinion of the case or of what your verdict should be.

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 14   **Authority: 9th Cir. Civ. Jury Inst. 1.18 (2007)**

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 16   Given as Requested: \_\_\_\_\_

17   Given as Modified: \_\_\_\_\_

18   Refused: \_\_\_\_\_

19   Withdrawn: \_\_\_\_\_

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 21   \_\_\_\_\_  
 22   JUDGE OF THE DISTRICT COURT

**18. STIPULATIONS OF FACT**

The parties have agreed to certain facts that will be read to you. You should therefore treat these facts as having been proved:

[INSERT STIPULATIONS OF FACT.]

**Authority: 9th Cir. Civ. Jury Inst. 2.2 (2007)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT



A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. [When a person is unavailable to testify at trial, the deposition of that person may be used at the trial.]

[Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.]

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT

1                                    **20. IMPEACHMENT EVIDENCE—WITNESS**

2            The evidence that a witness [e.g., has been convicted of a crime, lied under oath on a prior  
3 occasion, etc.] may be considered, along with all other evidence, in deciding whether or not to  
4 believe the witness and how much weight to give to the testimony of the witness and for no other  
5 purpose.

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14 **Authority: 9th Cir. Civ. Jury Inst. 2.8 (2007)**

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16 Given as Requested: \_\_\_\_\_

17 Given as Modified: \_\_\_\_\_

18 Refused: \_\_\_\_\_

19 Withdrawn: \_\_\_\_\_

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22 JUDGE OF THE DISTRICT COURT  
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Evidence [will now be] [was] presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers [have been] [were] given in writing and under oath, before the actual trial, in response to questions that were submitted in writing under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

**Authority:** 9th Cir. Civ. Jury Inst. 2.10 (2007)

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn:

JUDGE OF THE DISTRICT COURT

As permitted by law, the parties served upon each other a written request for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the parties or which the parties failed to deny.

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT



1                                   **24.     EXPERT WITNESS: GENERAL (ALTERNATE)**

2           Witnesses who have special knowledge, skill, experience, training, or education in a  
3 particular subject have testified to certain opinions. This type of witness is referred to as an  
4 expert witness. In determining what weight to give any opinions expressed by an expert witness,  
5 you should consider the qualifications and believability of the witness, the facts or materials upon  
6 which each opinion is based, and the reason for each opinion.

7           An opinion is only as good as the facts and reasons on which it is based. If you find that  
8 any such fact has not been proved, or has been disproved, you must consider that in determining  
9 the value of the opinions. Likewise, you must consider the strengths and weaknesses of the  
10 reason on which it is based.

11           You must resolve any conflict in the testimony of the witnesses, weighing each of the  
12 opinions expressed against the others, taking into consideration the reasons given for the opinion,  
13 the facts relied upon by the witness, his or her relative credibility and his or her special  
14 knowledge, skill, experience, training and education.

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16 **Authority: Nevada Civ. Jury Inst. — Expert Witness 3EX.2 (2011)**

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18 Given as Requested: \_\_\_\_\_

19 Given as Modified: \_\_\_\_\_

20 Refused: \_\_\_\_\_

21 Withdrawn: \_\_\_\_\_

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23 \_\_\_\_\_  
24 JUDGE OF THE DISTRICT COURT

**25. EXPERT WITNESS: RELIANCE UPON  
MATTERS NOT ADMITTED IN EVIDENCE**

An expert witness has testified about [his] [her] reliance upon [books] [treatises] [articles] [statements] that have not been admitted into evidence. Reference by the expert witness to this material is allowed so that the expert witness may tell you what [he] [she] relied upon to form [his] [her] opinions. You may not consider the material as evidence in this case. Rather, you may only consider the material to determine what weight, if any, you will give to the expert's opinions.

**Authority: Nevada Civ. Jury Inst. — Expert Witness 3EX.3 (2011)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

**26. EXPERT WITNESS: HYPOTHETICAL QUESTION**

A hypothetical question has been asked of an expert witness. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that admission upon the value of the opinion.

**Authority: Nevada Civ. Jury Inst. — Expert Witness 3EX.4 (2011)**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT



1                   **27. CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE**

2           Certain charts and summaries not received in evidence [may be] [have been] shown to you  
3 in order to help explain the contents of books, records, documents, or other evidence in the case.  
4 They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts  
5 or figures shown by the evidence in the case, you should disregard these charts and summaries  
6 and determine the facts from the underlying evidence.

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14 **Authority: 9th Cir. Civ. Jury Inst. 2.12 (2007)**

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18 Refused: \_\_\_\_\_

19 Withdrawn: \_\_\_\_\_

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22 JUDGE OF THE DISTRICT COURT  
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1                                   **28.     CHARTS AND SUMMARIES IN EVIDENCE**

2           Certain charts and summaries [may be] [have been] received into evidence to illustrate  
3 information brought out in the trial. Charts and summaries are only as good as the underlying  
4 evidence that supports them. You should, therefore, give them only such weight as you think the  
5 underlying evidence deserves.

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14 **Authority: 9th Cir. Civ. Jury Inst. 1.18 (2007)**

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16 Given as Requested: \_\_\_\_\_

17 Given as Modified: \_\_\_\_\_

18 Refused: \_\_\_\_\_

19 Withdrawn: \_\_\_\_\_

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22 JUDGE OF THE DISTRICT COURT  
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**29. SPECIAL JURY INSTRUCTION NO. 1: INTERFERENCE WITH FLIGHT  
CREW MEMBERS AND ATTENDANTS**

An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, or attempts or conspires to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life.

**Authority: 49 U.S.C. § 46504**

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

**Authority:** 14 C.F.R. § 91.11

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT

Alaska Airlines is liable for Plaintiffs' damage, if any, occasioned by delay in their transportation by air. However, Alaska Airlines is not liable if it proves that Alaska Airlines and its agents took all necessary measures to avoid the damage or that it was impossible for Alaska Airlines to take such measures.

**Authority:** Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929 (“Warsaw Convention”), art. 19, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11, *reprinted in* 49 U.S.C. § 40105, as amended at The Hague in 1955; Warsaw Convention, art. 20, as amended by Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air (1975).

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT

If Alaska Airlines proves that the damage from the delay was caused by or contributed to by the negligence of the Plaintiffs, you may exonerate Alaska Airlines wholly or partly from its liability.

**Authority:** Warsaw Convention, Art. 21(1), as amended by Montreal Protocol No. 4.

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT

1       **33. SPECIAL JURY INSTRUCTION NO. 5: TOKYO CONVENTION DEFENSE**

2           As the aircraft commander, Captain Swanigan may, when he has reasonable grounds to  
 3 believe that a person has committed, or is about to commit, an act which may or does jeopardize  
 4 the safety of the aircraft or persons or property therein, or which may or does jeopardize good  
 5 order or discipline on board the aircraft, impose upon such person reasonable measures including  
 6 restraint which are necessary:  
 7

8           (a) to protect the safety of the aircraft, or of persons or property therein;

9           (b) to maintain good order and discipline on board; or

10          (c) to enable him to deliver such persons to competent authorities or to disembark the  
 11 passenger.

12           If Captain Swanigan acted with such reasonable grounds during Flight 694 and imposed  
 13 upon Plaintiffs such reasonable measures, then Alaska Airlines is not liable to Plaintiffs.  
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 16 **Authority:** Convention on Offences and Certain Other Acts Committed On Board Aircraft,  
 17 Signed at Tokyo, on 14 September 1963 (Tokyo Convention), arts. 1, 6, 10.

18 Given as Requested: \_\_\_\_\_

19 Given as Modified: \_\_\_\_\_

20 Refused: \_\_\_\_\_

21 Withdrawn: \_\_\_\_\_  
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 24 JUDGE OF THE DISTRICT COURT  
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Under Federal Aviation Regulation 14 C.F.R. § 91.3(a), the pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of the aircraft.

Given as Requested: \_\_\_\_\_

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT



Under 14 C.F.R. § 121.537, the pilot in command of an aircraft is, during flight time, in command of the aircraft and crew and is responsible for the safety of passengers, crewmembers, cargo, and the aircraft. The pilot in command has full control and authority in the operation of the aircraft and over other crewmembers and their duties during flight time.

**Authority:** 14 C.F.R. § 121.537(d)

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT

The Captain of an airplane must be able to act decisively in an emergency and, in doing so, rely on communications from his crew.

**Authority:** *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 872 (9th Cir. 2010).

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn:

JUDGE OF THE DISTRICT COURT

1                   **37. SPECIAL JURY INSTRUCTION NO. 9: RIGHT TO REFUSE**  
2                   **TRANSPORTATION**

3                   An airline is justified in refusing to transport a passenger if that transportation, in the  
4                   opinion of the pilot, would be inimical to the safety of the flight. In judging the legality of a  
5                   denial of passage, you must look to the opinion of the airline pilot, and that opinion controls, if it  
6                   is a reasonable opinion based on the facts and circumstances as they appear to the pilot at the time  
7                   that the decision was made. It is not what is reasonable in the after-light, but what appears to be  
8                   reasonable at the time.

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13                   **Authority: *Cordero v. CIA Mexicana de Aviacion*, 681 F.2d 669, 671 n.2 (9th Cir. 1982)**

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15                   Given as Requested: \_\_\_\_\_

16                   Given as Modified: \_\_\_\_\_

17                   Refused: \_\_\_\_\_

18                   Withdrawn: \_\_\_\_\_

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22                   JUDGE OF THE DISTRICT COURT

1                   **38. SPECIAL JURY INSTRUCTION NO. 10: DELAY DAMAGES**

2                   Damages for “delay in transportation” under Article 19 of the Warsaw Convention must  
 3 be directly tied to the Plaintiffs’ late arrival at their destination airport. Such damages include,  
 4 but are not necessarily limited to, the cost of making alternative travel arrangements, the cost  
 5 associated with the amount of time lost due to the delay, and inconvenience caused by the delay.  
 6 You may not award delay damages for emotional distress or reputational injury, if any, that may  
 7 have been occasioned by the delay.  
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 14 **Authority:** *Smith v. Piedmont Aviation, Inc.*, 567 F.2d 290, 292 (5th Cir.1978) (holding that cost  
 15 of making alternative travel arrangements was one type of delay damage contemplated by the  
 16 Warsaw Convention); *Lopez v. E. Airlines, Inc.*, 677 F. Supp. 181, 183 (S.D.N.Y. 1988) (holding  
 17 that the plaintiffs’ loss of time was another type of delay damage contemplated under the Warsaw  
 18 Convention); *Daniel v. Virgin Atl. Airways, Ltd.*, 58 F. Supp. 2d 986, 992 (N.D. Cal. 1998)  
 19 (holding that damages for “inconvenience” were another type of damages cognizable under the  
 20 Warsaw Convention, but that damages for emotional distress were not); *Lee v. Am. Airlines, Inc.*,  
 21 355 F.3d 386, 387 (5th Cir. 2004) (damages for emotional/mental distress not recoverable under  
 22 Article 19 of the Warsaw Convention); *Trans World Airlines, Inc. v. Christophel*, 500 S.W.2d  
 23 409, 411 (Ky. Ct. App. 1973) (rejecting a claim for mental anguish damages under Article 19 of  
 24 the Warsaw Convention).

25 Given as Requested: \_\_\_\_\_

26 Given as Modified: \_\_\_\_\_

27 Refused: \_\_\_\_\_

28 Withdrawn: \_\_\_\_\_

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 JUDGE OF THE DISTRICT COURT

1                   **39. SPECIAL JURY INSTRUCTION NO. 11: PREEMPTED DAMAGES**

2                   Captain Swanigan's statements to the Reno Police at the Reno airport were made during  
3 the process of disembarking the plaintiffs from Flight 694. Plaintiffs cannot recover any  
4 damages, other than those directly tied to their delay, related to Captain Swanigan's report to the  
5 Reno Police.  
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14 **Authority:** *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 873 (9th Cir. 2010) ("It is thus fair to say  
15 that the pilot's statements to the police were part of the disembarkation process. Considering 'the  
16 total circumstances surrounding [plaintiffs'] injuries, viewed against the background of the  
intended meaning of Article 17,' we conclude that the crew's report to the police was covered by  
the Warsaw Convention.") (citations omitted); Warsaw Convention, art. 17; *Maugnie v.*  
*Compagnie Nationale Air France*, 549 F.2d 1256, 1257, 1262 (9th Cir.1977).  
17

18 Given as Requested: \_\_\_\_\_

19 Given as Modified: \_\_\_\_\_

20 Refused: \_\_\_\_\_

21 Withdrawn: \_\_\_\_\_  
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JUDGE OF THE DISTRICT COURT  
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**40. SPECIAL JURY INSTRUCTION NO. 12: DELAY DAMAGES CAP**

Unless Plaintiffs have proven that Alaska Airlines' actions constituted "willful misconduct," any damages you award Plaintiffs under Article 19 of the Warsaw Convention may not exceed 16,600 Special Drawing Rights ("SDR") per Plaintiff. An SDR is the monetary unit of the International Monetary Fund. An award of 16,600 SDRs is the equivalent of approximately \$25,500.

**Authority:** Additional Protocol No. 2 to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September 1955, art. 22(1), Sept. 25, 1975, 2097 U.N.T.S 69.

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

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JUDGE OF THE DISTRICT COURT

1           **41. SPECIAL JURY INSTRUCTION NO. 13: WILLFUL MISCONDUCT**

2           In order to prove “willful misconduct,” Plaintiffs must prove that Alaska Airlines intended  
3 to cause Plaintiffs’ damages, or that Alaska Airlines acted recklessly with knowledge that damage  
4 to Plaintiffs would probably result.  
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14 **Authority:** Montreal Protocol No. 4; *Carey v. United Airlines*, 255 F.3d 1044, 1050 (9th  
15 Cir. 2001).

16 Given as Requested: \_\_\_\_\_

17 Given as Modified: \_\_\_\_\_

18 Refused: \_\_\_\_\_

19 Withdrawn: \_\_\_\_\_  
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22 JUDGE OF THE DISTRICT COURT  
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1           **43. SPECIAL JURY INSTRUCTION NO. 14: DEFAMATION ELEMENTS**

2           In order to prove their defamation claim, Plaintiffs must demonstrate that Alaska Airlines  
 3 made (1) a false and defamatory statement of fact concerning the Plaintiffs; (2) that the statement  
 4 was published to a third person; (3) that Alaska Airlines was at least negligent in making the  
 5 statement; and (4) that Plaintiffs suffered actual or presumed damages.  
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 14 **Authority:** *Pope v. Motel 6*, 114 P.3d 277, 282 (Nev. 2005) (“A defamation claims requires  
 15 demonstrating (1) a *false* and defamatory statement of fact by the defendant concerning the  
 16 plaintiff”) (emphasis added) *Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82, 87 (Nev. 2002)  
 (“Statements of opinion cannot be defamatory”).

17 Given as Requested: \_\_\_\_\_

18 Given as Modified: \_\_\_\_\_

19 Refused: \_\_\_\_\_

20 Withdrawn: \_\_\_\_\_  
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 JUDGE OF THE DISTRICT COURT  
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A true statement is not defamatory. A statement of opinion is not defamatory.

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT

**45. SPECIAL JURY INSTRUCTION NO. 16: CLAIMS SUBJECT TO LAW  
ENFORCEMENT REPORTING PRIVILEGE**

Plaintiffs' following defamation claims are subject to the law enforcement reporting  
privilege:

- Plaintiffs' [second claim for relief] concerning Frank Raymond's e-mail to the Federal Air Marshalls.
- Plaintiffs' [eighth and ninth claims for relief] concerning Captain Majer's Chief Pilot Newsletter.

**Authority:** *Pope v. Motel 6*, 114 P.3d 277, 284 (Nev. 2005).

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

Plaintiffs' following defamation claims are subject to the law enforcement reporting privilege:

- Plaintiffs’ [fifth claim for relief] concerning Angela Kelly’s e-mail to Mary Ryding and John Severski.
- Plaintiffs’ [sixth claim for relief] concerning Mary Ryding’s email to John Severski and Angela Kelly.
- Plaintiffs’ [seventh claim for relief] concerning Dennis Mellen’s e-mail to Angela Kelly.
- Plaintiffs’ [eighth and ninth claims for relief] concerning Captain Majer’s Chief Pilot Newsletter.

**Authority:** *Pope v. Motel 6*, 114 P.3d 277, 284 (Nev. 2005).

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT

Plaintiffs' following defamation claims are subject to the common interest privilege:

- Plaintiffs' [second claim for relief] concerning Frank Raymond's e-mail to the Federal Air Marshalls.
- Plaintiffs' [fifth claim for relief] concerning Angela Kelly's e-mail to Mary Ryding and John Severski.
- Plaintiffs' [sixth claim for relief] concerning Mary Ryding's email to John Severski and Angela Kelly.
- Plaintiffs' [seventh claim for relief] concerning Dennis Mellen's e-mail to Angela Kelly.
- Plaintiffs' [eighth and ninth claims for relief] concerning Captain Majer's Chief Pilot Newsletter.

**Authority:** *Circus Circus Hotels, Inc. v. Witherspoon*, 657 P.2d 101, 105 (Nev. 1983) (qualified privilege arises under Nevada law when publication of a statement is made to persons sharing a common interest).

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

JUDGE OF THE DISTRICT COURT

**48. SPECIAL JURY INSTRUCTION NO. 19: COMMON INTEREST PRIVILEGE**

Unless Plaintiffs have shown that Alaska Airlines acted with malice in fact, any statement the court has found to have been made by Alaska Airlines to a person or entity with a common interest in maintaining flight safety and security cannot be defamatory because it is protected by the common interest privilege.

**Authority:** *Circus Circus Hotels, Inc. v. Witherspoon*, 657 P.2d 101, 105 (Nev. 1983) (qualified privilege arises under Nevada law when publication of a statement is made to persons sharing a common interest).

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

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JUDGE OF THE DISTRICT COURT

Unless Plaintiffs have shown that Alaska Airlines acted with malice in fact, any statement the court has found to have been made solely between Alaska Airlines' agents and/or employees in the regular course of Alaska Airlines' business cannot be defamatory because it is protected by the intra-corporate communications privileges.

**Authority:** *Pope v. Motel 6*, 114 P.3d 277, 284 (Nev. 2005).

Given as Requested: \_\_\_\_\_

Given as Modified:

Refused:

Withdrawn:

JUDGE OF THE DISTRICT COURT

**50. SPECIAL JURY INSTRUCTION NO. 21: LAW ENFORCEMENT REPORTING  
PRIVILEGE**

Unless Plaintiffs have shown that Alaska Airlines acted with malice in fact, any statement the court has found to have been made by Alaska Airlines to a person or entity involved in law enforcement cannot be defamatory because it is protected by the law enforcement reporting privilege.

**Authority:** *Pope v. Motel 6*, 114 P.3d 277, 284 (Nev. 2005).

Given as Requested: \_\_\_\_\_

Given as Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

Withdrawn: \_\_\_\_\_

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JUDGE OF THE DISTRICT COURT



## ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS



1                                   **53.     DAMAGES: UNCERTAINTY AS TO AMOUNT**

2           A party seeking damages has the burden of proving both that they did, in fact, suffer  
 3 injury and the amount of damages resulting from that injury. The amount of damages need not be  
 4 proved with mathematical exactitude, but the party seeking damages must provide an evidentiary  
 5 basis for determining a reasonably accurate amount of damages. There is no requirement that  
 6 absolute certainty be achieved; once evidence establishes that the party seeking damages did, in  
 7 fact, suffer injury, some uncertainty as to the amount of damages is permissible. However, even  
 8 if it is provided by an expert, testimony that constitutes speculation not supported by evidence is  
 9 not sufficient to provide the required evidentiary basis for determining a reasonably accurate  
 10 award of damage.

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 14 **Authority: Nevada Civ. Jury Inst. — Contracts CN.48 (2011)**

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 16 Given as Requested: \_\_\_\_\_

17 Given as Modified: \_\_\_\_\_

18 Refused: \_\_\_\_\_

19 Withdrawn: \_\_\_\_\_

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 21 \_\_\_\_\_  
 22 JUDGE OF THE DISTRICT COURT  
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1 Respectfully submitted,

2 Dated: January 31, 2013

MORRISON & FOERSTER LLP

3  
4 By: William V. O'Connor, Jr.  
William V. O'Connor, Jr.

5  
6 Attorneys for Defendant  
ALASKA AIRLINES, INC.  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 31, 2013, a true and correct copy of the foregoing **DEFENDANT ALASKA AIRLINES, INC.'S PROPOSED JURY INSTRUCTIONS** was transmitted electronically to the Electronic Filing System of the United States District Court for the District of Nevada, constituting service of the filed document, on all Filing Users, all of whom are believed to have consented to electronic service.

Executed on January 31, 2013, at San Diego, California.

/s/ William V. O'Connor, Jr.  
William V. O'Connor, Jr.